Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Message Text

PAGE 01 STATE 009585

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ERDA-07 FMC-02 TRSE-00 H-02 INR-07 INT-05 JUSE-00

NSAE-00 NSC-05 NSF-02 OMB-01 PA-02 PM-04 PRS-01 SP-02

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AMEMBASSY LONDON PRIORITY
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UNCLASSIFIED

PAGE 02 STATE 009585

UNCLAS STATE 009585

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Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

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SUBJECT: NOTE BY US COMMISSIONERS ON STRENGTHENING AND IMPROVING THE SCHEME OF JOINT INTERNATIONAL ENFORCEMENT OF THE ICNAF FISHERIES PROTOCOLS WITHIN THE CONVENTION AREA AND STATISTICAL AREAS 0 AND 6

THE UNITED STATES AT THE SEVENTH SPECIAL MEETING OF THE ICNAF AT MONTREAL, CANADA (SEPTEMBER 1975) EXPRESSED THE NEED FOR FURTHER IMPROVEMENT OF THE EXISTING SCHEME OF JOINT ENFORCEMENT. THIS IMPROVEMENT IS NECESSITATED BY CONTINUING VIOLATIONS OF THE COMMISSION'S REGULATIONS BY THE FLEETS OF CONTRACTING PARTIES AS SPECIFIED IN COM-MISSIONERS DOCUMENT 75/1X/50 (SERIAL NO. 3710). FOR SEVERAL YEARS THE UNITED STATES HAS ENCOURAGED WIDER PARTICIPATION IN THE SCHEME OF JOINT ENFORCEMENT. IN-SPECTORS NAMES ARE PROVIDED TO MEMBER GOVERNMENTS, BUT IN FACT THERE IS NO EVIDENCE THAT ACTUAL PARTICIPATION IN THE FORM OF FULL-SCALE AT-SEA INSPECTION HAS INCREASED. VIO-LATIONS REMAIN UNDETECTED BY COUNTRIES THAT SEND THEIR VESSELS TO FISH IN THE CONVENTION AREA. IT APPEARS CLEAR TO U.S. OFFICIALS THAT MOST MEMBER NATIONS HAVE NO EFFEC-TIVE DIRECT CONTROL OVER THEIR VESSELS FROM THE TIME THEY LEAVE PORT UNTIL THE TIME THEY RETURN. THE RESULT OF THIS NEGLIGENCE HAS BEEN AN EPIDEMIC OF INFRINGEMENTS. WHEN THERE IS NO MEANINGFUL FLAG STATE ENFORCEMENT

OF REGULATIONS, FISHERMEN VIOLATE COMMISSION REGULATIONS. THE RESULT HAS BEEN A SERIES OF CLOSED AREA VIOLATIONS, OVER-FISHING, INADEQUATE LOGGING OF CATCHES, AND OTHER LESS INFRINGEMENTS. UNDOUBTEDLY, COUNTLESS OTHER IN-FRACTIONS REMAIN UNDETECTED BY COASTAL STATES INSPECTORS WHO HAVE CARRIED THE SCHEME OF JOINT ENFORCEMENT FOR-WARD ALMOST ALONE THROUGH MOST OF THE YEARS SINCE ITS IMPLEMENTATION.

OVER THE PAST FOUR YEARS DATA ON INCIDENTS REPORTED TO UNCLASSIFIED

PAGE 03 STATE 009585

U.S. OFFICIALS SHOW THAT ON NUMEROUS OCCASIONS MEMBER NATIONS HAVE ALLOWED THEIR FLEETS TO CONTINUE FISHING FAR BEYOND THE DATE WHEN THEIR ALLOTTED QUOTA FOR A SPECIES HAD BEEN CAUGHT. THE U.S. HAS ATTEMPTED TO MONITOR THE CATCHES OF A DOZEN OR MORE MEMBER NATIONS. WE FIND IT INCONVEIVABLE, YET APPARENTLY TRUE, THAT SOME MEMBER NATIONS, WHICH LICENSE AND REGISTER JUST THEIR OWN VESSELS, APPEAR TO KNOW LESS OF THEIR VESSELS TRUE CATCHES THAN DO OFFICIALS OF THE U.S.

U.S. INSPECTORS LIKEWISE HAVE ENCOUNTERED MANY CASES OF WIDESPREAD VIOLATIONS OF THE ICNAF SCHEME OF JOINT EN-FORCEMENT WITHIN A NATIONAL FLEET. IN SOME INSTANCES THE

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

SAME VESSEL HAS BEEN CITED IN SUCCESSIVE WEEKS FOR THE SAME VIOLATION. THE OVERWHELMING IMPRESSION ARISES THAT MANY INDIVIDUAL CAPTAINS AND IN SOME CASES ENTIRE FLEETS ARE BEING POORLY ADVISED OF THEIR RESPONSIBILITIES TO ICNAF, OR IF CORRECTLY ADVISED THEY ARE NOT BEING MANAGED PROPERLY TO ASSURE PROPER ADHERENCE. INDIVIDUAL FISHING CAPTAINS, BECAUSE THEY ARE NOT THREATENEDWITH IMMEDIATE PROSECUTION AND LOSS OF RIGHT TO FISH, TAKE RISKS AND VIOLATE, KNOWING THAT EVENTUAL PUNISHMENT, IF ANY WILL BE OFFSET BY THE FULL CARGO OF FISH BROUGHT HOME. THIS LAX ATTITUDE ON THE PART OF CAPTAINS, AND THEIR APPARENT SCOFFING AT REGULATIONS, EXIST BECAUSE MEMBER NATIONS HAVE NOT PARTICIPATED SINCERELY AND FULLY IN THE SCHEME OF JOINT ENFORCEMENT.

CLEARLY, IF THE COMMISSION IS GOING TO ATTAIN ITS OBJECTIVES THE PRESENT SITUATION MUST NOT BE ALLOWED TO CONTINUE. ACCORDINGLY, THE U.S. OFFERS THE FOLLOWING PROPOSALS FOR CONSIDERATION AND ACTION, THROUGH STACTIC, AT THE 8TH SPECIAL MEETING OF THE COMMISSION.

DETENTION OF VESSELS AND WITHDRAWAL OF REGISTRATION FOR CERTAIN INFRINGEMENTS

IN THE EVENT THAT SERIOUS INFRINGEMENTS ARE DISCOVERED BY AN INSPECTOR, IT WOULD FACILITATE THE FLAG STATE'S PROCESS FOR DISPOSITION OF OFFENSES IF AN INSPECTOR OF THE FLAG STATE HAD AN OPPORTUNITY TO VIEW THE UNCLASSIFIED

EVIDENCE OF THE INFRINGEMENT PROMPTLY AND REVIEW THE FACTS DISCOVERED WITH THE INSPECTOR AS SOON AS POSSIBLE. AND, IN THE CASE OF THESE SERIOUS VIOLATIONS, THE OFFENDING VESSEL SHOULD NOT BE PERMITTED TO CONTINUE FISHING UNTIL THE INFRINGEMENT HAS BEEN RESOLVED. PROVISIONS FOR SHORT TERM DETENTION OF VESSELS PENDING THE ARRIVAL OF THE FLAG STATE INSPECTOR AND FOR WITHDRAWAL OF REGISTRATIONS BY THE FLAG STATE INSPECTOR APPEAR NECESSARY TO ACCOMPLISH THIS. THE U.S. COMMISSIONERS THEREFORE MAKE THE FOLLOWING PROPOSAL: PROPOSAL FOR AMENDMENT TO THE JOINT SCHEME OF INTERNATIONAL ENFORCEMENT. THE U.S. COMMISSIONERS PROPOSE THAT THE JOINT SCHEME OF INTERNATIONAL ENFORCEMENT BE AMENDED BY INSERTING THE FOLLOWING NEW PARAGRAPH:

" NOTWITHSTANDING ANY OTHER PROVISION OF THIS SCHEME, WHEN AN APPARENT INFRINGEMENT OF THE REGULATIONS PERTAINING TO:

A. FISHING IN A CLOSED AREA OR WITH GEAR PROHIBITED IN A SPECIFIC AREA;

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

B. FISHING ON AN "OTHERS" QUOTA WITHOUT PRIOR NOTIFICATION TO THE ICNAF SECRETARIAT, OR AFTER THE ALLOWABLE CATCH FOR THAT STOCK OR SPECIES HAS BEEN TAKEN;

C. FISHING FOR STOCKS OR SPECIES IN AN AREA AFTER THE CONTRACTING GOVERNMENT HAVING JURISDICTION OVER THE INSPECTED VESSEL HAS NOTIFIED THE EXECUTIVE SECRETARY THAT ITS ALLOWABLE CATCH FOR THOSE STOCKS OR SPECIES HAS BEEN TAKEN;

D. TAKING A PROHIBITED AMOUNT OF BY-CATCH OF A REGULATED SPECIES BY USING IMPROPER MESH SIZE OR CHAFING GEAR;

E. FALSIFICATION OF FISHING LOGBOOK RECORDS;

F. FAILURE TO POSSESS PROPER FLAG STATE REGISTRATION DOCUMENTS FOR THE AREA WHERE FISHING IS FOUND, THE INSPECTOR SHALL, WITH A VIEW TOWARD FACILITATING FLAG STATE ACTION ON THE APPARENT INFRINGEMENT, IMMEDIATELY ATTEMPT
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TO COMMUNICATE WITH ANY INSPECTOR OF THE INSPECTED VESSEL'S FLAG STATE KNOWN TO BE IN THE VICINITY OR THE AUTHORITY OF THE INSPECTED VESSEL'S FLAG STATE DESIGNATED IN ACCORDANCE WITH PARAGRAPH 1, ABOVE. THE MASTER

OF THE INSPECTED VESSEL SHALL ARRANGE FOR MESSAGES TO BE SENT AND RECEIVED BY USING HIS RADIO EQUIPMENT AND OPERATOR FOR THIS PURPOSE. UNTIL THE INSPECTOR ESTABLISHES COMMUNICATIONS, HE MAY, AT HIS OPTION, REMAIN ABOARD THE INSPECTED VESSEL TO PRESERVE THE EVIDENCE OF THE APPARENT INFRINGEMENT UNTIL THE IMMEDIATE DISPOSITION OF THE INFRINGEMENT IS COMMUNICATED TO THE INSPECTOR OR DESIGNATED AUTHORITY OF THE FLAG STATE. IF A FLAG STATE INSPECTOR AGREES TO PROCEED TO THE INSPECTED VESSEL AND WILL ARRIVE IN LESS THAN 48 HOURS, THE INSPECTOR, AT HIS OPTION, MAY REMAIN ON BOARD THE INSPECTED VESSEL TO PRESERVE THE EVIDENCE OF THE APPARENT INFRINGEMENT UNTIL THE FLAG STATE INSPECTOR ARRIVES. WHILE THE INSPECTOR REMAINS ON BOARD, THE INSPECTED VESSEL MAY NOT CONTINUE TO FISH.

" WHEN ONE OF THE INFRINGEMENTS LISTED IN PARAGRAPH (A) THROUGH (F), ABOVE IS VERIFIED AND CONCURRED BY AN INSPECTOR OF THE FLAG STATE OF THE INSPECTED VESSEL, THAT INSPECTOR SHALL THEREUPON TEMPORARILY WITHDRAW THE VESSEL'S REGISTRATION TO FISH IN THE CONVENTION AREA, SUCH WITHDRAWAL TO REMAIN IN EFFECT UNTIL THE APPROPRIATE AUTHORITIES OF THE FLAG STATE HAVE MADE A FINAL DETERMINATION OF THE DISPOSITION OF THE "INFRINGEMENT AND COMMUNICATED THAT DETERMINATION TO THE SECRETARIAT".

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

OVERQUOTA PENALTIES

SINCE QUOTA ALLOCATIONS ARE MADE TO CONTRACTING GOVERN-
MENTS INSTEAD OF INDIVIDUAL VESSELS, THE VESSELS GENER-
ALLY CANNOT BE FOUND IN VIOLATION OF QUOTA REGULATIONS.
SINCE QUOTA VIOLATIONS HAVE CONTINUED AND, IN SOME CASES,
BEEN OF VERY GREAT MAGNITUDE, SOME MEANS MUST BE
ESTABLISHED FOR GREATER ADHERENCE TO THE ALLOCATIONS
TO PREVENT CONTINUED VIOLATIONS AND CONSEQUENT DE-
UNCLASSIFIED

PAGE 06 STATE 009585

PLETION OF CRITICAL SPECIES. THE U.S. COMMISSIONERS
THERE MAKE THE FOLLOWING PROPOSAL:

PROPOSAL FOR AMENDMENT TO THE "MANAGEMENT OF INTERNATIONAL
QUOTA REGULATIONS, ADOPTED BY THE INTERNATIONAL COMMIS-
SION FOR THE NORTHWEST ATLANTIC FISHERIES IN PLENARY
SESSION ON 14 JUNE 1974." (ANNUAL REPORT OF 1974. PRO-
CEEDINGS NO. 20. APPENDIX III. PAGE 241. SERIAL NO.
3403 (A.A.4).)

THE UNITED STATES COMMISSIONERS PROPOSE THAT THE REGU-
LATIONS GOVERNING THE MANAGEMENT OF INTERNATIONAL QUOTA
REGULATIONS, WHICH WAS ORIGINALLY ADOPTED BY THE COM-
MISSION ON 14 JUNE 1974, BE AMENDED BY INSERTING THE
FOLLOWING NEW PARAGRAPH, ENTITLED "OVERQUOTA PENALTIES",
AT THE END OF THE PRESENT REGULATION:

"7. THAT NOTWITHSTANDING THE ABOVE, WHEN THE COMMISSION
FINDS THAT NATIONALS OR VESSELS OF, OR UNDER CONTRACT OR
CHARTER TO, A CONTRACTING GOVERNMENT OTHER THAN THE
COASTAL STATES, HAVE TAKEN MORE THAN THEIR ALLOWED CATCH
QUOTA IN ANY CATEGORY OF CATCH QUOTAS FOR ANY QUOTA
PERIOD, THE COMMISSION WILL ADJUST THE CORRESPONDING
CATCH QUOTA FOR THAT CONTRACTING GOVERNMENT BY RE-
DUCING THE QUOTA FOR THE QUOTA PERIOD FOLLOWING THE
COMMISSION'S FINDING BY AN AMOUNT EQUAL TO 250 PERCENT
OF THE AMOUNT IN EXCESS. THE QUOTA ADJUSTMENT SHALL BE
SUBTRACTED FROM THE RELEVANT QUOTA FOLLOWING THE DETER-
MINATION OF QUOTAS PROVIDED FOR IN PARAGRAPHS 2 AND 3
ABOVE AND SHALL NOT RESULT IN ANY INCREASE IN OTHER
QUOTAS FOR THE GOVERNMENT TO WHICH THE QUOTA ADJUSTMENT
APPLIES OR TO ANY OTHER GOVERNMENT. IN MAKING ITS
FINDINGS, THE COMMISSION WILL CONSIDER CATCH INFORMATION
AND OTHER INFORMATION SUBMITTED BY ANY CONTRACTING
GOVERNMENT." KISSINGER

NOTE BY OC/T: POUCHED TO HALIFAX.

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Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

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Margaret P. Grafeld
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EO Systematic Review
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